



7A9
1/28/85

TO: David Ulrich
FROM: Bob Leminger
RE: Reilly Tar (IN) / Notice of Citizen Suit
DATE: 1-19-85

In answer to your questions regarding the above referenced matter ...

1) Yes, the agreement to implement the CIFS by Reilly Tar would be in the form of a §106 Consent Order if the company is willing to do it pursuant to our work plan and our Consent Order guidance. A draft order will be sent to the company in about two weeks. I have advised them that no major modification of the draft order or the work plan is possible.

2) On December 20 headquarters sent the attached response to the notice of intent to file a citizen suit after first coordinating with me. I have spoken to Kenneth Warren, attorney for the plaintiffs in this matter. He has filed an action in state circuit court under common law theories of nuisance, negligence, etc., seeking monetary damages and injunctive relief. He will be filing an action in federal district court in mid-February. He will be meeting with me on February 4, at which time

He will discuss further with me, the type of environmental relief he is seeking from Reilly Tar. I will also explain what our intentions are with regard to the site, i.e., either Reilly Tar or U.S. EPA will do an RIFS at the site pursuant to our work plan, a remedy will be selected pursuant to a ROD, and the remedy will be implemented by Reilly or U.S. EPA. After the meeting I will advise you whether I would recommend that we intervene in this action.

cc: Schofer

Cade

Magel

Karen Vendl



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 20 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

CERTIFIED MAIL
RETURN RECEIPT

Kenneth J. Warren, Esquire
Wolf, Block, Schorr and Solis-Cohen
Twelfth Floor Packard Building
S.E. Corner 15th and Chestnut Streets
Philadelphia, PA 19102

Re: Notice of Citizen Suit Under Section 7002 of the
Resource Conservation and Recovery Act (RCRA)

Dear Mr. Warren:

This letter acknowledges the receipt of your Notice, dated October 19, 1984, filed under Section 7002 of RCRA.

As you may know, the Reilly Tar site is listed on the Agency's National Priorities List, and as such, Reilly Tar is targeted for a Remedial Investigation and Feasibility Study (RI/FS) in February, 1985, the first step in the Superfund cleanup process. The RI/FS will provide the Agency with an assessment of the alternatives for cleanup at the site. EPA's Waste Management Division, located in Chicago, Illinois, has completed a workplan on the site, and is planning to meet with the potentially responsible parties in December, 1984 to discuss the RI/FS. The region is also in the process of putting together a community relations package which will inform the community of the problems at the site, and what the Agency is doing to proceed with the cleanup.

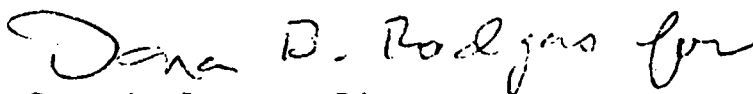
I have enclosed a copy of the new RCRA amendments signed by the President on November 8, 1984, affecting the citizen notice and suit provision. Please note that subsection (B) restricts certain actions under §7002. Specifically, a §7002 suit cannot be initiated where the Government:

"(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and is diligently proceeding with a remedial action under that Act;

In the Agency's view, the current Government activity at the site would seem to preclude an action under the foregoing section. Of course this new amendment does not preclude your suit from being filed for the Subtitle D violations for open dumping.

If you should need further information, please contact Mr. Robert Leininger, Office of Regional Counsel, Region V, at 312-886-6720. Please advise my office if you should decide to file in the Eastern District Court, or if an agreement is reached.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dana B. Rodgas for".

Gene A. Lucero, Director
Office of Waste Programs
Enforcement (WH-527)

Enclosure